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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 52

[WC Docket Nos. 13-97, 04-36, 07-243, 10-90; CC Docket Nos. 95-116, 01-92, 99-200; FCC 13-51]

Petitions of Vonage Holdings Corp. and TeleCommunications Systems, Inc. for Limited Waiver Regarding Access to Numbering Resources

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission

(Commission) establishes a limited technical trial of direct access to numbers.

Specifically, it grants Vonage Holdings Corporation (Vonage) and other interconnected VoIP providers that have pending petitions for waiver of the Commission's rules and that meet the terms and conditions outlined a limited, conditional waiver to obtain a small pool of telephone numbers directly from the NANPA and/or the PA for use in providing interconnected VoIP services. We tailor this waiver to test whether giving interconnected VoIP providers direct access to numbers will raise issues relating to number exhaust, number porting, VoIP interconnection, or intercarrier compensation, and if so, how those issues may be efficiently addressed. The trial, and the public comment, will improve the Commission's ability to adopt well-crafted rules in this proceeding. In addition, we grant a narrow waiver of our rules to allow TeleCommunication Systems, Inc. (TCS) direct access to pseudo Automatic Number Identification (p-ANI) codes for the purpose of providing 911 and Enhanced 911 (E911) service. As discussed below, this limited waiver will allow TCS, which provides VoIP Positioning Center service, to better ensure

that emergency calls are properly routed to trained responders at public safety answering points, or PSAPs.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], and is applicable beginning April 18, 2013.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Marilyn Jones, Wireline Competition Bureau, Competition Policy Division, (202) 418-1580, or send an email to marilyn.jones@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order in WC Docket Nos. 13-97, 04-36, 07-243, 10-90 and CC Docket Nos. 95-116, 01-92, 99-200, FCC 13-51, adopted and released April 18, 2013. The full text of this document is available for public inspection during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY-B402, Washington, DC 20554, telephone (800) 378-3160 or (202) 863-2893, facsimile (202) 863-2898, or via the Internet at <http://www.bcpweb.com>. It is available on the Commission's Web site at <http://www.fcc.gov>.

I. ORDER

1. In the Order, the Commission establish a limited trial of direct access to numbers. We grant Vonage and other interconnected VoIP providers that have pending petitions for waiver of § 52.15(g)(2)(i) of the Commission's rules, and that meet the terms and conditions outlined below, a time-limited waiver, subject to a number of conditions and limitations, to obtain a small pool of telephone numbers directly from the administrators for use in providing IP services, including VoIP services, on a commercial basis to residential and business customers.

2. We grant this waiver to permit us to conduct a trial to help inform our decision on whether, and if so how, the Commission should amend the rules to allow interconnected VoIP providers to obtain telephone numbers directly. During the trial, Vonage and other participants will be subject to monthly reporting requirements that will be made public to provide an opportunity for the state commissions, industry and general public to comment. Moreover, we make clear that providers participating in the trial may be required to return numbers to a LEC partner if problems arise. With these safeguards, and subject to the conditions described below, we expect that the narrowly tailored trial will provide valuable technical insight for the Commission to assess whether amending our rules to provide direct access to numbers routinely will raise issues relating to number exhaust, number porting, VoIP interconnection, and intercarrier compensation, and if so, how those issues may be efficiently addressed. Within 45 days of completion of the trial, the Bureau will report to the Commission on the results of the trial. The report will be placed in the record and state commissions, the industry and general public will have 30 days to provide comments on the report.

3. We limit this trial to VoIP providers that have already sought waivers to obtain direct access to numbers. With the exception of Vonage, those providers have not specifically committed to comply with the terms or conditions set forth below. The waiver we grant is not a blanket waiver, as Vonage and other VoIP providers requested. Rather, it is circumscribed in a variety of ways described herein. We expect that we could obtain useful information from a trial involving additional VoIP providers, however. For example, different providers might highlight unique problems or develop solutions to problems that would assist us in crafting final rules. Therefore, other interconnected VoIP providers that have pending petitions for waiver of § 52.15(g)(2)(i) of the Commission's rules may participate on the same terms and conditions and proportionate scale as Vonage so long as they file a proposal with the Wireline Competition Bureau and proceed on the same schedule as Vonage does. There are a substantial number of pending waiver requests, which will give us adequate opportunity to trial a variety of factual

scenarios. Because these petitions have been pending for months or years, we believe that all potentially interested providers have had ample time to request a waiver. We therefore limit this grant to pending petitioners. Moreover, the Commission has provided and received comment on those waiver petitions. Thus interested parties have had an opportunity to comment about specific petitioners. The Bureau may reject any proposal from a provider that is “red-lighted” by the Commission, is out of compliance with any Commission obligation to which it is subject, or is otherwise determined to pose a risk to consumers that is not outweighed by the benefits of permitting the VoIP provider to participate in the trial.

4. In the Order, we also grant TCS, a provider of VPC service, a narrow waiver to allow it to obtain p-ANI codes directly from the RNA for the purpose of providing 911 and E911 service, in states where TCS is unable to obtain certification because TCS has either been denied certification or can demonstrate that a state does not certify VPC providers.

A. Access to Numbers Trial

1. Background

5. On March 5, 2005, Vonage filed a petition requesting a waiver of § 52.15(g)(2)(i) of the Commission’s rules so that it may obtain from the numbering administrator telephone numbers to use in deploying IP-enabled services, including VoIP services, on a commercial basis to residential and business customers. Vonage requested a waiver until the Commission adopts final numbering rules in the IP-Enabled Services proceeding and stated that it would comply with the conditions the Commission set forth in the SBCIS Waiver Order. The Commission granted the SBCIS waiver request subject to compliance with (1) the Commission’s number utilization and optimization requirements, (2) numbering authority delegated to the states, and (3) industry guidelines and practices, including filing NRUF Reports. The Commission also required SBCIS to file requests for numbers with the Commission and the relevant state commission at least 30 days prior to requesting numbers from the Administrators. Finally, the Commission required

SBCIS to comply with the requirement in 47 CFR 52.15(g)(2)(ii) that it be capable of providing service within 60 days of activating the numbers it requests.

6. Vonage renewed its request on March 8, 2011, noting that the opportunities to provide consumers with advanced features and services continue to grow and maintaining that its request is consistent with the Commission's approach to numbering and porting obligations for interconnected VoIP providers. On November 11, 2011, Vonage supplemented its request and offered to satisfy additional conditions. See Letter from Brita D. Strandberg, Counsel to Vonage Holdings Corp. to Marlene H. Dortch, Secretary, Federal Communications Commission (filed Nov. 11, 2011) (Vonage Supplement). Namely, it offered to maintain at least a 65 percent number utilization rate across its telephone number inventory; to offer IP interconnection to other carriers and providers; to comply with the Commission's number administration requirements and ensure appropriate telephone number management; and to provide the Commission with a migration plan for its transition to direct access to numbers within 90 days of commencing the migration, and every 90 days thereafter for 18 months. On December 27, 2011, the Bureau released a Public Notice seeking to refresh the record on Vonage's petition and on pending petitions for limited waiver of § 52.15(g)(2)(ii) filed by other parties. Vonage filed several *ex parte* letters explaining why it believes that granting its petition would serve the public interest and responding to commenters' concerns about, inter alia, number porting, interconnection, and intercarrier compensation.

2. Discussion

7. We find that good cause exists to grant Vonage and other interconnected VoIP providers with pending petitions a limited, conditional waiver of § 52.15(g)(2)(i) to permit them to obtain telephone numbers directly from the number administrator, subject to the conditions set forth in the SBCIS Waiver Order and various commitments detailed below. The Commission emphasizes that it is not deciding in this Order whether VoIP is an information service or a telecommunications service.

8. Several competitive LECs including Bandwidth.Com, Voice Services, and Level 3 Communications, LLC (“CLEC Participants”) urge the Commission not to grant a waiver or conduct a trial concurrent with the rulemaking. They assert that it is inappropriate to conduct such a trial before the Commission has made a finding that “it is good policy to provide numbers to non-carriers” or has established rules that will protect consumers and other companies. We disagree. The record on access to numbers contains questions on a host of technical issues, and the trial we establish here will provide critical information as we consider the questions raised in this Notice. Delaying the trial until after the NPRM has been completed would needlessly delay resolution of these issues.

9. We tailor the trial to provide a circumscribed and informative test case that will allow the Commission to identify any problems and create industry-wide rules to address such issues. We therefore limit the duration and geographic scope of the trial. We also impose on Vonage (and other interconnected providers with pending petitions) a number of conditions that are similar to conditions we are exploring in the rulemaking. These conditions are thus designed not only to protect the public interest but to maximize the probative value of the trial and help us identify the terms and conditions under which we might expand direct access to numbers.

10. **Scope of Trial.** We limit the scope of the trial in several ways. We describe below the limits as they apply to Vonage. As described above, however, other interconnected VoIP providers with pending petitions may also participate in the trial, provided they comply with the terms below, including filing proposal with the Wireline Competition Bureau and proceeding on the same schedule as Vonage does. The Bureau may reject any proposal from a provider that is “red-lighted” by the Commission, is out of compliance with any Commission obligation to which it is subject, or is otherwise determined to pose a risk that is not outweighed by the benefits of permitting the VoIP provider to participate in the trial.

11. First, under the trial, Vonage may obtain up to (1) twenty 1,000-blocks of new numbers in pooling rate centers or LATAs, or (2) nineteen 1,000-blocks in pooling rate centers or

LATAs and one 10,000-block in a non-pooling rate center or LATA. Vonage can use these blocks of new numbers to sign up a new customer that is changing providers or to give a number to a customer does not yet have a number. In addition, up to 125,000 numbers may be reassigned from Vonage's CLEC partners directly to Vonage. This will enable Vonage to test porting processes for existing and new customers, as well as trial the process for assigning numbers to non-ported customers. By design, these numerical limits will also limit the geographic scope of the trial for Vonage. Other providers interested in participating in the trial may obtain a quantity of numbers proportionate to their overall scale. Trial participants other than Vonage may obtain direct access to numbers to port up to five percent of their interconnected VoIP service customers as of the date of the release of this order. The limits we impose on Vonage represent less than 5 percent of its existing numbers, and approximately 5 percent of its total subscribers. See Vonage Holding Corp. Reports Fourth Quarter and Full Year 2012 Results, <http://pr.vonage.com/releasedetail.cfm?ReleaseID=739997> (last visited April 18, 2013); Letter from Brita D. Strandberg, Counsel to Vonage Holdings Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 99-200, at 5-6 (filed Nov. 11, 2011) (noting that Vonage maintains at least 65% utilization across its telephone number inventory). All such providers may obtain one 1,000- or 10,000-block of numbers in one rate center (pooling or non-pooling, respectively), and an additional 1,000 block in a pooling rate center for every 6,500 numbers that can be ported (rounded down). That is, a provider that may port in 5,000 numbers may also obtain new numbers in one rate center; a provider that may port in 10,000 numbers may obtain new numbers in two rate centers; and a provider that may port in 15,000 numbers may obtain new numbers in three rate centers.

12. Second, Vonage must submit to the Wireline Competition Bureau and each relevant state commission a numbering proposal within 30 days of the release of this order. That proposal must (1) include a certification that Vonage will comply with the terms and conditions of this waiver, (2) identify the rate centers or LATAs in which it wishes to have numbers directly

assigned to it, and note how many numbers in each rate center or LATA it proposes to receive as new numbers and how many it proposes to port in from existing or new customers, and (3) describe the phase-in process to implement the trial. See Vonage Supplement at 5-6; Vonage July 31 Ex Parte Letter at 4-6 (committing, in connection with its waiver request, to provide a transition plan for migrating customers to its own numbers within 90 days of commencing that migration and every 90 days thereafter for 18 months). The plans, as well as the reports, will be available for public comment. Even if the plans and reports contain confidential information, interested parties may review the information pursuant to a Protective Order. The proposal will be approved 30 days after filing unless the Bureau finds that the proposal does not comply with the requirements of this Order. Vonage may not request or obtain direct access to numbers until its proposal is approved.

13. Third, the trial will remain in effect for six months from the date when Vonage receives Bureau approval of its proposal to the Bureau. At the end of that time, the trial will expire and Vonage may not obtain direct access to additional numbers under this time-limited waiver. We note that the expiration of the waiver alone does not require Vonage to return the numbers it has received under the waiver. But the Commission reserves the right to order the return of such numbers.

14. Fourth, to permit states, the public, and the Commission to monitor the impact of the trial, Vonage must file monthly reports beginning 60 days after Vonage requests direct access to numbers from a numbering administrator. These reports must include: (1) the total of new numbers placed in service by Vonage; (2) Vonage's total number of port-in requests (including existing Vonage customers as well as newly won customers), and the percentage of successful ports-in; (3) the number of requests to port out from Vonage a number that it holds directly rather than through a CLEC partner, and the percentage of successful ports-out; (4) the total number of routing failures, along with the causes of those failures; and (5) a description of any billing or

compensation disputes. These reports will be public, and entered into the record of the attached NPRM to provide an opportunity for public comment.

15. We find that these limitations appropriately balance our goal of obtaining useful, real-world data without prejudging the questions raised above regarding industry-wide changes. Finally, we establish safeguards in the event the Commission has concerns that Vonage's actions during this trial are inconsistent with our rules, policies, or the conditions set forth herein. Specifically, under such circumstances, immediately upon a directive from the Commission (or the Wireline Competition Bureau) Vonage must make arrangements to port to a carrier numbering partner any numbers already in use by customers, promptly and in a manner that does not disrupt service to consumers or other providers and to return to the number administrators any numbers not yet in use by customers. For numbers already assigned to end users, we require Vonage to port those numbers to a carrier that can obtain numbers directly from the administrators.

16. **Conditions of Trial.** Vonage has committed to comply with the conditions the Commission set forth in the SBCIS Waiver Order and to comply with a number of additional requirements intended to address commenters' concerns. The Commission granted the SBCIS waiver request subject to compliance with (1) the Commission's number utilization and optimization requirements; (2) numbering authority delegated to the states; and (3) industry guidelines and practices, including filing NRUF Reports. The Commission also requires SBCIS to file requests for numbers with the Commission and the relevant state commission at least 30 days prior to requesting numbers from the Administrators. Finally, the Commission requires SBCIS to comply with the requirement in 47 CFR 52.15(g)(2)(ii) that it be capable of providing service within 60 days of activating the numbers it requests. We agree that these conditions will ensure that the public interest is protected, and will help test possible terms and conditions that might attach to a rule change. We therefore condition our trial waiver of § 52.15(g)(2)(i) on Vonage's compliance with the following requirements. Vonage must satisfy the Commission's

number utilization and optimization requirements and industry guidelines and practices, including abiding by the numbering authority delegated to state commissions and filing NRUF Reports. See 47 CFR Part 52. See 47 CFR 52.15(f)(6) (requiring carriers to file NRUF reports). Requiring Vonage to comply with numbering requirements will help alleviate concerns with numbering exhaust. For example, the NRUF reporting requirement will allow the Commission to better monitor Vonage's number utilization. Most VoIP providers' utilization information is embedded in the NRUF data of the LEC from whom it purchases a Primary Rate Interface (PRI) line.

17. In addition to committing to comply with the requirements of the SBCIS Waiver Order, Vonage committed to maintain at least 65 percent number utilization across its telephone number inventory; offer IP interconnection to other carriers and providers; work to ensure that its carrier partners comply with applicable law, including intercarrier compensation obligations; and comply with the Commission's numbering requirements. We condition Vonage's limited waiver of § 52.15(g)(2)(i) on its adherence to these commitments. This will help us assess their benefit and efficacy as permanent rules.

18. In addition to the above conditions proposed by Vonage, some state commissions recommended additional conditions to ensure efficient use of telephone numbers. We agree that many of those conditions will help protect the efficient use of valuable, and limited, numbers, and will help our assessment of whether and how to modify our rules governing access to numbers. Accordingly, we require Vonage to comply with the following conditions: (1) provide the relevant State commission with regulatory and numbering contacts when it requests numbers in that State; (2) consolidate and report all numbers under its own unique Operating Company Number (OCN); (3) provide customers with the ability to access all N11 numbers in use in a State; and (4) maintain the original rate center designation of all numbers in its inventory. Maintaining the original rate center designation is important in order to facilitate number porting requests. As noted above, Vonage is required to comply with specific reporting requirements regarding the progress of the trial. In addition, we invite parties to submit information regarding the

trial. We are particularly interested in the experiences of customers and service providers that are directly affected by Vonage receiving direct access to numbers. Commenters should address any benefits or concerns with the trial as well as the effectiveness of the conditions. Upon completion of the trial, the Bureau will report to the Commission on the results of the trial. The report will be placed in the record and state commissions, the industry and general public may comment on the report. We will consider those comments when we evaluate the trial and develop rules with respect to expanding access to numbers.

19. Pursuant to the parameters and the conditions set forth herein, we find that good cause exists to grant Vonage a waiver of § 52.15(g)(2)(i) of the Commission's rules in order to conduct a limited technical trial.

B. TCS Waiver Request

1. Background

20. On February 20, 2007, TCS filed a petition requesting that the Commission waive § 52.15(g)(2)(i) of our rules and find that TCS, as a provider of VPC service, is an eligible user of p-ANI codes without having to demonstrate that it is certified in all 50 states. See Petition of TeleCommunications Systems, Inc. and HBF Group, Inc. for Waiver of Part 52 of the Commission Rules, CC Docket No. 99-200 (filed Feb. 20, 2007) (TCS Waiver). Although TCS filed jointly with HBF, Intrado, Inc. acquired HBF in April 2008. Therefore, we only address the petition as it applies to TCS. On April 21, 2008, TCS filed reply comments, arguing that, although states have an interest in p-ANI utilization, state certification is not necessary to protect those interests. Moreover, TCS argues that if state CLEC certification is required, then obtaining one state certification should be adequate to access p-ANI codes throughout the country. TCS also argues that if some form of certification is required, it should come from the Commission or a national public safety organization.

21. In 2012, TCS refreshed the record in this proceeding and announced that it was certified as a competitive local exchange carrier in 42 states and could obtain p-ANI codes

directly for use in those states. However, TCS states that it cannot obtain p-ANI codes in all states due to state certification issues. TCS lacks certification in Idaho, Colorado, Wyoming, South Dakota, South Carolina, West Virginia, Alaska, and the District of Columbia, and has an open application in Maine. TCS encountered certification questions in Iowa, Illinois, Ohio, and Arizona that directly related to the inapplicability of CLEC certification to VoIP Positioning Services. Moreover, TCS notes that it had to relinquish its inventory of p-ANI codes to Neustar as part of the Commission's move to a permanent p-ANI administrator. TCS thus cannot obtain p-ANI codes in certain states, and TCS asserts that this may result in disruptions to E911 and homeland security. It notes in particular that its difficulty obtaining codes in South Carolina "is currently causing a 911 routing disruption" in that state. TCS states that, "because it is not [a] CLEC certified in South Carolina and there is not 'central 911 authority' in South Carolina from which to secure a waiver, [TCS] has been denied access to p-ANI in this area. This places TCS's customers, and their end users, in jeopardy." TCS requests that the Commission grant a waiver so that TCS may obtain p-ANIs in states where TCS is not certified.

2. Discussion

22. We grant TCS a limited waiver of § 52.15(g)(2)(i) of the Commission's rules so that it may obtain p-ANI codes from the RNA in South Carolina and other states where it cannot obtain certification. TCS may show that it cannot obtain state certification by demonstrating that the state does not certify VPC providers (it has already done so in South Carolina). We grant this limited waiver while the Commission considers whether § 52.15(g)(2)(i) should be modified to allow all providers of VPC service to directly access p-ANI codes.

23. This waiver is limited in duration and scope. It lasts only until the Commission addresses whether to modify § 52.15(g)(2)(i) of the rules to allow all VPC providers direct access to numbers, specifically p-ANI codes, for the purpose of providing 911 and E911 service. The waiver applies only with respect to states where TCS demonstrates that it cannot obtain p-ANI codes because it cannot obtain state certification. For example, TCS could provide the

Commission with a denial from a state commission with the reason for denial being that the state does not certify VPC providers, or a statement from the state commission or its general counsel that it does not certify VPC providers. Upon such a showing, the Bureau will notify the RNA that TCS may directly access p-ANI codes in a particular state. We will consider broader relief, including options that TCS proposed, in the rulemaking. During the pendency of the rulemaking, we find good cause to grant TCS a limited waiver of § 52.15(g)(2)(i) of the Commission's rules so that it may obtain p-ANIs in those states where it cannot obtain certification.

II. PROCEDURAL MATTERS

A. Ex Parte Rules – Permit-But-Disclose

24. The proceeding this Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission's ex parte rules. See 47 CFR 1.1200 et seq. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with § 1.1206(b). In proceedings governed by § 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments

thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

B. Paperwork Reduction Analysis

25. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

C. Congressional Review Act

26. The Commission will not send a copy of this Order pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A), because the adopted rules are rules of particular applicability.

III. ORDERING CLAUSES

27. IT IS ORDERED that, pursuant to the authority contained in sections 1, 3, 4, 201-205, 251, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 153, 154, 201-205, 251, 303(r), the Petition of Vonage Holdings Corp. for Limited Waiver of § 52.15(g)(2)(i) of the Commission's rules Regarding Access to Numbering Resources; and the Petition of TeleCommunication Systems, Inc. and HBF Group, Inc. for Waiver of Part 52 of the Commission's Rules ARE GRANTED to the extent set forth herein, and this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch,
Secretary.

[FR Doc. 2013-13704 Filed 06/18/2013 at 8:45 am; Publication Date: 06/19/2013]